

Remarks

Claims 1-29 are pending in the application and have been rejected variously under 35 USC 101, 103, and 112. Applicant traverses those rejections, as discussed below.

The specification has been objected to for having an Appendix A and Appendix B. Amendments to the specification have been offered to clarify that material disclosed in those sections formerly designated as appendices are indeed part of the specification. Accordingly, removal of the objections is respectfully requested.

***Rejection Under 35 USC §101***

Claims 1-19 have been rejected under 35 USC 101 as being directed to “non-statutory subject matter”. Specifically, independent claims 1 and 15 were rejected, along with their dependent claims 2-14 and 16-19, respectively. Claims 1 and 15 have been amended to include the limitation that method steps can be carried out by at least one computer system. Accordingly, removal of these rejections is respectfully requested.

***Rejections Under 35 USC §112, 1st paragraph***

Claims 1-19 have been rejected because “It appears that the funding of the program in claims 1 and 15 is subject only to human interaction”. The claims have been amended to clarify that various method steps involve computer interaction. For example, claims 1 and 15 have been clarified to include the statement “said method comprising steps configured for being carried out by at least one computer system configured for managing policy and claims information, cash flows and performance against a mortality rate.” Accordingly, applicant believes these clarifications overcome the rejections under 35 USC 112, and removal of these rejections is respectfully requested.

***Rejections Under 35 USC §103***

The office action states that the present invention lacks uniqueness, suggesting that the present invention lacks an inventive step since the steps would be obvious under Ross US#5974390

in view of Holmwood "an innovative alternative for funding life insurance programs." The suggestion that the present invention is similar to Ross is an incorrect one. Effectively, the only similarity between the disclosure of Ross and the present invention is that they both involve a group of individual policies owned by an entity or foundation. In Ross, each of the life policies has a specified expected mortality determined by utilizing the 1980 CSO tables. Ross then creates a formula in which they allocate both a probability of mortality and based on a percentage of the total pool what that probability of payment actually is.

The present invention is totally and completely different. In the present invention a large block of policies are issued, normally in a minimum of 10,000 lives. There is no need to attempt to predict which individuals will die or to assign a probability to any specific individual's death. Rather, the present invention includes a scheduled mortality pattern, which will result in paying off of the financing arrangements and all other expenses of the inventive fund generation program. The actual mortality is not impacted by the financing mortality. The projected mortality is that which is determined to meet the financial needs of the funds generation program, not that which is determined by some arbitrary actuarial table that changes from year to year. It is this financing mortality that serves as the basis for the Mortality Guarantee. For instance, currently insurance companies are using the 2000 CSO tables; the 1980 CSO tables are considered antiquated and predict far too great a projected mortality because of the increased life expectancy individuals experience today.

In addition, the Mortality Guarantee is not, in effect, a traditional reinsurance arrangement as discussed by in the office action. In a traditional reinsurance arrangement an insurance company reassigns a portion of the underlying expected mortality in an individual policy or block of policies to a reinsurance company in exchange for a premium payment to the reinsurance company. The Mortality Guarantee Company guarantees a predicted rate or amount of mortalities, whether or not the actual deaths ever occur. They are not reinsuring the underlying death benefit; in fact, the insurance companies already have in place a traditional reinsurance treaty for those underlying policies. It is possible that the reinsurance treaty could be with the same company that has issued the Mortality Guarantee but this is not necessary or essential. This is a clear and distinct difference from Ross.

Other attempts to design foundation owned life insurance programs have normally revolved around some attempt to create a "black box" in which a stated matrix of lives will generate a predictable stream of mortality benefits, as is described in Ross. The present invention does not, in any way, attempt to do this. The attempts, such as Ross, to create some such matrix are doomed to failure because insurance companies in their contract language retain the right to change mortality costs for an entire class. Therefore, if you were able, in some creative way, to establish a matrix of lives in which the actual mortality exceeded the expected mortality designed in the life insurance contract, the life insurance company would simply raise the cost of mortality for the entire class of policies to reflect the actual mortality as experienced versus the expected mortality used to design the insurance policy. Additionally, in the present invention, the mortality guarantor makes a payment if a death does not occur whereas a traditional reinsurance company would only make a mortality payment if a death does occur. This is an additional clear and distinct difference from Ross.

The present invention does not attempt to create any such matrix. It is, at its simplest, an arbitrage arrangement in which monies are borrowed at a fixed low rate of interest, invested in equity-orientated securities that over time should achieve a greater rate of return than the cost of borrowing. It is this net benefit and earnings, which creates the ultimate benefit for the foundation. The unique nature of the present invention is the means and methods in which we have assured the lender of repayment through the use of the Mortality Guarantee and have assured the charity of no possible negative expectations due to non-recourse financing.

The present invention clearly requires a third party lender to provide the financing for the purchase of the life insurance policies. The analyst suggests that Ross could also use a lending source, however, presence of a lending source in Ross does not, in any way, affect their suggested model for leveling of expected returns. In fact, Ross is nothing more than a means of predicting expected terms of mortality from a policy utilizing an actuarial table. Unfortunately, Ross utilizes an actuarial table that is some 20 years out of date and projects far greater mortalities than are currently occurring. The present invention and the combination of the mortality guarantor and the lender is a program that differentiates itself dramatically from Ross.

Turning now to the cited Holmwood article, this article describes premium financing for the

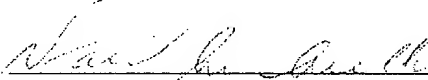
purchase of life insurance policies. The purpose of this type of model is to attempt to create a situation in which money can be borrowed by an entity, interest can be paid in a tax deductible fashion, and those monies can be used to purchase a life insurance policy, normally a large second to die policy for the purpose of funding the estate needs. This is the so-called "OPM" or other people's money type of strategy. While the present invention clearly uses financing as a basis for its program it is the unique way in which the financing is both collateralized and repaid via the Mortality Guarantee which differentiates clearly from the situation of Holmwood.

In the Holmwood approach the loan is individually secured by the insured or by assets controlled by the insured or his or her employer. In the case of the present invention a charitable foundation receives non-recourse financing. This is clearly a substantive difference from Holmwood. In the present invention, the repayment of the note to the lending institution is assured by the Mortality Guarantor and not by policy assets or actual experienced death claims. The Mortality Guarantor receives its assurances through a collateral assignment of the underlying assets of the policy and has first call on any actual death benefits that are received. Again, this differentiates greatly from Holmwood.

It has been explained that Ross and Holmwood do not teach each and every element of claims 1-29, as provided herein, either alone or in combination. Further, while Ross and Holmwood exist in the same filed, generally, there is no implicit or explicit motivation to combine these references. However, even if combined, they do not make obvious the inventions of independent claims 1, 15, and 20, nor their respective dependent claims. Accordingly, it is believed that claims 1-29 are not obvious in view of these references and removal of the rejections is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. §1.16 and §1.17 that may be required, or credit any overpayment, to our Deposit Account No. 50-1133.

Respectfully submitted,

  
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